

No.

CR 07 00282 RMW

UNITED STATES DISTRICT COURT *E-filing*
NORTHERN DISTRICT OF CALIFORNIA **Filed**

SC/Don
SAN JOSE DIVISION

MAY - 9 2007

THE UNITED STATES OF AMERICA

vs.

MICHAEL A. DALY

INDICTMENT

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

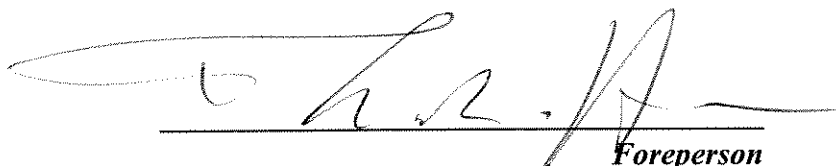
COUNTS ONE - TWENTY-FOUR:

Title 18, U.S.C. §§ 1343 and 2 - Wire
Fraud; Aiding and Abetting

COUNTS TWENTY-FIVE - THIRTY:

Title 18, U.S.C. §§ 1957 and 2 - Money
Laundering; Aiding and Abetting

A true bill.


Foreperson

Filed in open court this
A.D. 2007

9 day of May


United States Magistrate Judge

Bail. \$ No process needed

E-filing

Filed

MAY - 9 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. DALY,

Defendant.

CR No. 07 00282

VIOLATIONS: 18 U.S.C. § 1343—Wire
Fraud; 18 U.S.C. § 1957—Money
Laundering; 18 U.S.C. § 2—Aiding and
Abetting; 18 U.S.C. § 981(a)(1)(C) and 28
U.S.C. § 2461(c)—Forfeiture; 18 U.S.C.
§ 982(a)(1)—Forfeiture

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

At all times relevant to this Indictment:

1. Data Resource Group, Inc. (“DRG”) was based on Salisbury, Massachusetts, and was engaged in the business of reselling networking equipment manufactured and sold by Cisco Systems, Inc. (“Cisco”). DRG’s business address was 5C Fanaras Drive, Salisbury, Massachusetts 01952. DRG also did business through its website www.dataresourcesgroup.com.

2. Defendant Michael A. Daly was President of DRG.

3. Cisco was based in San Jose, California, and was a leading manufacturer and seller of networking equipment and services.

INDICTMENT

1 4. Mail Boxes Etc. ("MBE"), a UPS company, and UPS had retail service locations
2 throughout the United States. UPS's retail service locations were known as UPS Stores. MBEs
3 and UPS Stores permitted customers to obtain a private mailbox with a real street address, 24-
4 hour access to mail and package deliveries, and services such as packaging receiving,
5 notification, holding, and forwarding.

6 5. Among other things, Cisco sold SMARTnet service contracts on equipment that
7 allowed the end user to obtain technical support and advance replacement parts for the covered
8 equipment from Cisco. "Advance replacement" allowed end users to obtain replacement parts
9 from Cisco immediately, without having first to return the failed and defective part. SMARTnet
10 contracts were not transferable, and were for the benefit of the original end user. Once the
11 covered product was transferred to another party, any SMARTnet contract associated with the
12 part was removed from coverage. The new owner of the part had the option to register the part
13 with Cisco and obtain a new SMARTnet contract after the part was inspected and relicensed.

14 6. To provide technical support and advance replacement under SMARTnet
15 contracts, Cisco had a service request ("SR") system that allowed customers to contact Cisco and
16 obtain assistance with regard to defective and inoperative parts. A customer initiated an SR by
17 phone and by creating an account on Cisco Connection Online ("CCO"), a web-based customer
18 support application. To do so, the customer created an account on CCO, obtained a username,
19 and logged in to provide the SMARTnet contract number, serial number on the chassis of the
20 equipment covered by that SMARTnet contract, and a written explanation of the problem. SRs
21 were made through Cisco's Technical Assistance Center ("TAC").

22 7. Service engineers at the TAC engaged in a verbal and electronic written dialogue
23 with the customer in an attempt to resolve the issue, following a standardized series of resolution
24 attempts. If this protocol did not resolve the issue, the part was deemed failed and defective, and
25 the service engineer would issue a return material authorization ("RMA") number by which
26 Cisco tracked the advance-shipped replacement part.

27 8. Once an RMA was authorized, Cisco shipped the replacement part, typically using
28 Federal Express, along with a preaddressed, prepaid United Parcel Service or Federal Express

1 label and package for the failed and defective part to be returned. Cisco required the end user to
2 send back the failed and defective equipment within 30 days. The status of the RMA was
3 monitored through the internet and by phone, and communications concerning the RMA were
4 made through the internet and by phone.

5 COUNTS ONE THROUGH TWENTY-FOUR: (18 U.S.C. §§ 1343 and 2—Wire Fraud;
6 Aiding and Abetting)

7 9. The factual allegations in paragraphs 1 through 8 are re-alleged and incorporated
8 herein as if set forth in full.

9 THE SCHEME TO DEFRAUD

10 10. Beginning on a date unknown, but by no later than in or about June 2003, and
11 continuing to in or about February 2007, in the Northern District of California and elsewhere, the
12 defendant

13 MICHAEL A. DALY

14 knowingly, and with the intent to defraud, devised and intended to devise, and participated in, a
15 material scheme and artifice to defraud Cisco as to a material matter and to obtain money and
16 property by means of material false and fraudulent pretenses, representations and promises, and
17 the concealment of material facts by repeatedly creating fictitious names, using these fictitious
18 names to rent private mailboxes around the United States, associating the fictitious names
19 and particular Cisco parts with SMARTnet contracts, contacting Cisco under the guise of the
20 fictitious names, falsely and fraudulently informing Cisco that parts supposedly covered by
21 SMARTnet were failed and defective and needed to be replaced, causing Cisco to send
22 “replacement” parts to private mailboxes he rented using fictitious names, failing to return any
23 part to Cisco, and selling the “replacement” parts to customers.

24 11. It was part of the scheme and artifice that the defendant, at times directly and at
25 other times through his employees, created fictitious personal names and company names, and
26 used those names to create email accounts at different email providers. Using these fictitious
27 names, the defendant obtained private mailboxes at UPS Stores and MBEs in different states.
28 The defendant would then instruct employees at each UPS Store and MBE to forward overnight

1 any packages he received at the mailbox to him at his business address, 5C Fanaras Drive,
2 Salisbury, Massachusetts 01952.

3 12. It was further part of the scheme and artifice that the defendant, at times directly
4 and at other times through his employees, contacted Cisco through the internet, falsely posing as
5 a representative of a fictitious company, and claiming that he had a failed and defective Cisco
6 part covered by SMARTnet. He provided Cisco with an apparently valid SMARTnet contract
7 number and the serial number of the chassis of the supposedly failed and defective part. In
8 addition, the defendant falsely listed the various steps he claimed he had done to troubleshoot the
9 part, in order to induce Cisco send him a replacement overnight. The defendant would provide a
10 street address for the fictitious business that appeared to be legitimate but was in fact a private
11 mailbox at either a UPS Store or MBE.

12 13. It was further part of the scheme and artifice that the defendant, at times directly
13 and at other times through his employees, caused Cisco to create an RMA and to mail the
14 defendant a "replacement" part to replace the supposedly failed and defective part covered by the
15 SMARTnet contract. Usually the same day, Cisco shipped that "replacement" part to the address
16 the defendant provided for the fictitious company, through a commercial interstate carrier,
17 typically Federal Express. Once the "replacement" part arrived at the address, which was really a
18 private mailbox, the UPS Store or MBE that owned the mailbox would forward the part to Daly
19 at 5C Fanaras Drive, Salisbury, Massachusetts 01952.

20 14. It was further part of the scheme and artifice that, even though the defendant's
21 SMARTnet contract required him to return the failed and defective part about which he had
22 contacted Cisco, he returned no part.

23 15. It was further part of the scheme and artifice that the defendant, at times directly
24 and at other times through his employees, sold the "replacement" part, usually before causing
25 Cisco to send him the part and at other times shortly after causing Cisco to send him the part.
26 The defendant sometimes sold "replacement" parts he planned to obtain and did obtain through
27 the scheme and artifice to customers for \$10,000 or less and at other times for more than
28 \$10,000. After selling a "replacement" part to a customer, the defendant received payment from

the customer, typically in the form of a check. The defendant then deposited the payment in DRG's bank account. Once a "replacement" part arrived, the defendant shipped it to his customer, typically using Federal Express.

THE USE OF THE WIRES

16. Among other transmittals, on or about the dates listed below, in the Northern District of California and elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud and attempting to do so, the defendant

MICHAEL A. DALY

knowingly transmitted and caused to be transmitted, in interstate and foreign commerce, by means of wire communications, certain writings, signs, and signals, that is, transmissions from Massachusetts to a server at Cisco in San Jose, California, as set forth in the counts below:

Count	Date	Wire Communication
1	6/13/04	Service Request 600238347
2	10/1/04	Service Request 600569010
3	10/18/04	Service Request 600615004
4	11/2/04	Service Request 600661187
5	11/28/04	Service Request 600734291
6	12/08/04	Service Request 600766200
7	12/14/04	Service Request 600779901
8	12/15/04	Service Request 600787046
9	4/1/05	Service Request 601084795
10	4/25/05	Service Request 601178683
11	1/1/06	Service Request 602711755
12	1/6/06	Service Request 602744493
13	1/19/06	Service Request 602822881
14	1/24/06	Service Request 602849911
15	1/26/06	Service Request 602865657
16	1/28/06	Service Request 602883313
17	1/31/06	Service Request 602893677
18	2/8/06	Service Request 602956549

Count	Date	Wire Communication
19	2/21/06	Service Request 603034271
20	5/8/06	Service Request 603518607
21	6/9/06	Service Request 603737705
22	7/17/06	Service Request 603967397
23	2/16/07	Service Request 605399701
24	2/23/07	Service Request 605446589

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS TWENTY-FIVE THROUGH THIRTY: (18 U.S.C. §§ 1957 and 2—Money Laundering; Aiding and Abetting)

17. The factual allegations in paragraphs 1 through 8 and paragraphs 10 through 15, including the scheme to defraud described therein, are re-alleged and incorporated herein as if set forth in full.

18. Among other transactions, on or about the dates set forth in counts below, in the Northern District of California and elsewhere, the defendant knowingly engaged in monetary transactions by and through a financial institution, in and affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, deposits and transfers of funds in the approximate amounts set forth in the counts below, more than \$10,000 of such funds having been derived from a specified unlawful activity, that is, wire fraud:

Count	Date	Monetary Transaction	Amount
25	On or about 9/15/06	Deposit and transfer of funds by check from Wells Fargo bank account to Eastern Bank account	\$45,800
26	On or about 10/5/06	Deposit and transfer of funds by check from Bank of America account to Eastern Bank account	\$26,000
27	On or about 10/18/06	Deposit and transfer of funds by check from Virginia Commerce Bank account to Eastern Bank account	\$46,100

Count	Date	Monetary Transaction	Amount
28	On or about 12/7/06	Deposit and transfer of funds by check from Virginia Commerce Bank account to Eastern Bank account	\$38,900
29	On or about 12/26/06	Deposit and transfer of funds by check from Wells Fargo bank account to Eastern Bank account	\$62,300
30	On or about 1/3/07	Deposit and transfer of funds by check from Bank of America account to Eastern Bank account	\$45,500

All in violation of Title 18, United States Code, Sections 1957 and 2.

FIRST FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

19. The factual allegations contained in paragraphs 1 through 8, paragraphs 10 through 15, and Counts One through Twenty-Four of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

20. Upon conviction of any of the offenses alleged in Counts One Through Twenty-Four of this Indictment, the defendant

MICHAEL A. DALY

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all property constituting, and derived from, proceeds the defendant obtained, directly or indirectly, as the result of said violations, including but not limited to the following property:

- a. a sum of money equal to the total amount of proceeds defendant derived from the commission of said offenses.

21. If, as a result of any act or omission of the defendant, any of said property

- a. cannot be located upon the exercise of due diligence;

- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be divided without difficulty

any and all interest the defendant has in any other property, up to the value of the property described in paragraph 20 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

SECOND FORFEITURE ALLEGATION: (18 U.S.C. § 982(a)(1))

22. The factual allegations contained in paragraphs 1 through 8, paragraphs 10 through 15, and Counts Twenty-Five through Thirty of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982(a)(1).

23. Upon conviction of any of the offenses alleged in Counts Twenty-Five through Thirty of this Indictment, the defendant

MICHAEL A. DALY

shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(1), all right, title, and interest in property, real and personal, involved in said violations, or any property traceable to such property, including but not limited to the following:

- a. all commissions, fees, and other property constituting proceeds of said offenses;
- b. all property used in any matter to commit or facilitate the commission of said offenses;
- c. a sum of money equal to the total amount of money involved in the commission of said offenses.

24. If, as a result of any act or omission of the defendant, any of said property

- a. cannot be located upon the exercise of due diligence;

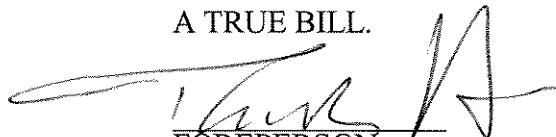
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be divided without difficulty

any and all interest the defendant has in any other property, up to the value of the property described in paragraph 23 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

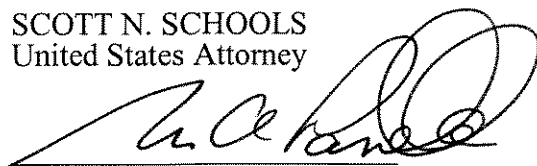
DATED:

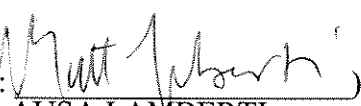
5/9/07

A TRUE BILL.


FOREPERSON

SCOTT N. SCHOOLS
United States Attorney


MATTHEW A. PARRELLA
Chief, San Jose Branch Office

(Approved as to form: )

AUSA LAMBERTI

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

See attached sheet.

E-filing

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY:

See attached sheet.

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

MICHAEL A. DALY

DISTRICT COURT NUMBER

Filed
MAY - 9 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

DEFENDANT

Name of Complainant Agency, or Person (a Title, if any)

Special Agent Edmund Ewing, FBI

☐ person is awaiting trial in another Federal or State Court, give name of court☐ this person/proceeding is transferred from another district per (circle one) FRCP 20, 21 or 40. Show District☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:☐ U.S. Att'y ☐ Defense☐ this prosecution relates to a pending case involving this same defendant☒ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded underSHOW
DOCKET NO.MAGISTRATE
CASE NO.
07-70118Name and Office of Person
Furnishing Information on
THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. AgencyName of Asst. U.S. Att'y
(if assigned)

MATTHEW A. LAMBERTI

IS NOT IN CUSTODY

1) ☐ If not detained give date any prior summons was served on above charges2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge5) ☐ On another conviction6) ☐ Awaiting trial on other charges☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer
been filed?☐ Yes
☐ NoIf "Yes"
give date
filedDATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☒ NO PROCESS*☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

INDICTMENT
UNITED STATES v. MICHAEL A. DALY
ATTACHMENT TO PENALTY SHEET

DEFENDANT:

MICHAEL A. DALY

OFFENSE CHARGED:

18 U.S.C. § 1343 and 2–Wire Fraud; Aiding and Abetting (Counts 1 through 24)

PENALTY:

20 years imprisonment
\$250,000 fine or twice the gross gain or loss, whichever is greater
3 years supervised release
\$100 mandatory special assessment

OFFENSE CHARGED:

18 U.S.C. § 1957 and 2–Money Laundering; Aiding and Abetting (Counts 25 through 30)

PENALTY:

10 years imprisonment
\$250,000 fine or twice the amount of the criminally derived property involved in the
transaction, whichever is greater
3 years supervised release
\$100 mandatory special assessment